

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of RICHARD NEIDERT and U.S. POSTAL SERVICE,  
POST OFFICE, Colorado Springs, CO

*Docket No. 03-647; Submitted on the Record;  
Issued June 10, 2003*

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DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,  
WILLIE T.C. THOMAS

The issue is whether appellant has more than a 13 percent right lower extremity or a 28 percent left lower extremity permanent impairment.

The case has been before the Board on prior appeals. In a decision dated June 3, 1997, the Board affirmed a November 29, 1994 schedule award for a 13 percent permanent impairment to the right lower extremity.<sup>1</sup> In a decision dated January 7, 2002, the Board affirmed a decision of the Office of Workers' Compensation Programs dated April 7, 2000.<sup>2</sup> The Board found that appellant had not established a recurrence of disability commencing March 1, 1995. The history of the case provided in the Board's prior decision is incorporated herein by reference.

By decision dated January 15, 1999, the Office issued a schedule award for a 28 percent left lower extremity impairment. The period of the award was 80.64 weeks commencing October 12, 1998.

In a letter dated September 9, 2002, appellant alleged that his medical condition had worsened and he believed he was entitled to a supplemental schedule award. He submitted a report dated April 22, 2002 from Dr. Oregon Hunter, a physical medicine and rehabilitation specialist. Dr. Hunter provided results on examination and stated that appellant had S1 radiculopathy, with a worsening of L4-5 and L5-S1 disc disease and a new herniated nucleus pulposus at L3-4.

By letter dated September 16, 2002, the Office requested that Dr. Hunter complete a form report regarding the degree of permanent impairment to the legs. In a form report dated September 20, 2002, Dr. Hunter indicated that the S1 nerve root was affected bilaterally; the

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<sup>1</sup> Docket No. 95-1371. The accepted conditions in the case are aggravation of low back strain and lumbar radiculopathy.

<sup>2</sup> Docket No. 00-2016.

impairment for sensory deficit or pain was reported as 7.5 percent and the impairment for decreased strength was also reported as 7.5 percent.

In a report dated October 17, 2002, an Office medical adviser indicated that the S1 impairments appeared to be the same impairment that had been considered in the prior schedule award. By letter dated October 25, 2002, the Office requested that Dr. Hunter submit a supplemental report. The Office noted that appellant had previously received a schedule award for a 13 percent impairment to the right leg and 28 percent to the left leg and requested that Dr. Hunter explain whether appellant had an additional impairment under the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*. Dr. Hunter did not provide a supplemental report.<sup>3</sup> In a report dated November 1, 2002, an Office medical adviser again indicated that any current impairment had previously been considered.

By decision dated November 21, 2002, the Office determined that appellant was not entitled to an additional schedule award.

The Board finds that the Office properly determined that appellant had not established entitlement to an additional schedule award.

Section 8107 of the Federal Employees' Compensation Act provides that, if there is permanent disability involving the loss or loss of use of a member or function of the body, the claimant is entitled to a schedule award for the permanent impairment of the scheduled member or function.<sup>4</sup> Neither the Act nor the regulations specify the manner in which the percentage of impairment for a schedule award shall be determined. For consistent results and to ensure equal justice for all claimants, the Office has adopted the A.M.A., *Guides* as the uniform standard applicable to all claimants.<sup>5</sup> As of February 1, 2001, the fifth edition of the A.M.A., *Guides* was to be used to calculate schedule awards.<sup>6</sup>

The September 20, 2002 form report from Dr. Hunter does not provide a reasoned opinion as to the degree of leg impairments under the fifth edition of the A.M.A., *Guides*. The report refers to 7.5 percent impairments without explanation as to how the impairments were calculated. Dr. Hunter did not refer to any specific tables or explain how the degree of impairment was determined. The Office requested a more detailed report, but the record does not contain a probative medical report as to the issues presented. A schedule award must be based on detailed description of the impairment by the attending physician<sup>7</sup> and in this case

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<sup>3</sup> Dr. Hunter indicated to the Office in an October 31, 2002 letter that prepayment was required prior to any response.

<sup>4</sup> 5 U.S.C. § 8107. This section enumerates specific members or functions of the body for which a schedule award is payable and the maximum number of weeks of compensation to be paid; additional members of the body are found at 20 C.F.R. § 10.404(a).

<sup>5</sup> A. *George Lampo*, 45 ECAB 441 (1994).

<sup>6</sup> FECA Bulletin No. 01-05 (issued January 29, 2001).

<sup>7</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6(c) (March 1995).

appellant did not provide sufficient medical evidence to establish the degree of permanent impairment to the legs. There is no probative medical evidence establishing more than the 13 percent right leg or 28 percent left leg previously awarded. The Board accordingly finds that the Office properly determined that appellant was not entitled to an additional schedule award.

The decision of the Office of Workers' Compensation Programs dated November 21, 2002 is affirmed.

Dated, Washington, DC  
June 10, 2003

Alec J. Koromilas  
Chairman

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
Alternate Member